

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.
★ JAN 17 2012 ★

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AMY OCANA, and
WILLIAM OCANA,

BROOKLYN OFFICE

Plaintiffs,

CV 12-0214
COMPLAINT

-against-

JURY TRIAL DEMANDED •

THE CITY OF NEW YORK, DAVID ROSENBERG,
JASON V. JACKSON, and JOHN DOES #1-10,

SUMMONS ISSUED

Defendants.
-----X

Plaintiffs AMY OCANA and WILLIAM OCANA, by and through their
attorneys, **THE LAW OFFICE OF SCOTT G. CERBIN, ESQ., PLLC**, complaining
of the defendants herein, respectfully show the Court and allege:

COGAN, J.

PRELIMINARY STATEMENT

1. This is a civil rights action in which the plaintiffs seek relief for the defendant's violation of their rights secured by the Civil Rights Act of 1871, 42 U.S.C. §§ 1981 and 1983; by the United States Constitution, including its Fourth and Fourteenth Amendments, and by the laws and Constitution of the State of New York. The plaintiffs seek damages, both compensatory and punitive, affirmative equitable relief, an award of costs and attorney's fees, and such other and further relief as this court deems just and equitable.

JURISDICTION AND VENUE

2. Jurisdiction of this Court is invoked under 28 U.S.C. § 1343 and 42 U.S.C. §§ 1981 and 1983.

3. The plaintiffs further invoke this court's supplemental jurisdiction, pursuant to 28 U.S.C. § 1367, over any and all state law claims and as against all parties that are so

related to claims in this action within the original jurisdiction of this court that they form part of the same case or controversy.

4. Venue herein is proper for the United States District Court for the Eastern District of New York under 28 U.S.C. § 1391 (a), (b) and (c).

PARTIES

5. Plaintiff Amy Ocana (MRS. OCANA) is thirty eight (38) years old and at all times hereinafter mentioned was and still is a citizen of the United States residing in the State of Delaware. Mrs. Ocana is of Puerto Rican ancestry.

6. Plaintiff William Ocana (MR. OCANA) is forty (40) years old and at all times hereinafter mentioned was and still is a citizen of the United States residing in the State of Delaware. Mr. Ocana is of Puerto Rican ancestry.

7. Defendant THE CITY OF NEW YORK was and is a municipal corporation duly organized and existing under and by virtue of the laws of the State of New York.

8. Defendant THE CITY OF NEW YORK is and was at all times relevant herein a municipal entity created and authorized under the laws of the State of New York. It is authorized to maintain a police department, which acts as its agent in the area of law enforcement and for which it is ultimately responsible. Defendant THE CITY OF NEW YORK assumes the risks incidental to the maintenance of a police force and the employment of police officers as said risk attaches to the public consumers of the services provided by the New York City Police Department.

9. Defendants ROSENBERG, JACKSON, and DOES are and were at all times relevant herein duly appointed and acting officers, servants, employees and agents

of THE CITY OF NEW YORK and/or the New York City Police Department, a municipal agency of defendant THE CITY OF NEW YORK. Defendants ROSENBERG, JACKSON, and DOES are and were at all times relevant herein acting under color of state law in the course and scope of their duties and functions as officers, agents, servants, and employees of defendant THE CITY OF NEW YORK, were acting for, and on behalf of, and with the power and authority vested in them by THE CITY OF NEW YORK and the New York City Police Department, and were otherwise performing and engaging in conduct incidental to the performance of their lawful functions in the course of their duties.

NOTICE OF CLAIM

10. Plaintiff's each filed a Notice of Claim with the Comptroller of the City of New York on or about May 31, 2011 within 90 days of the events complained of herein. More than 30 days have elapsed since the filing of the Notice of Claim, and adjustment or payment thereof has been neglected or refused.

STATEMENT OF FACTS

11. On February 20, 2011 at approximately 12:55 a.m. in the County of Kings plaintiffs MR. and MRS. OCANA were attending a birthday party at the residence of MR. OCANA's mother. For reasons that are still unclear a number of police officers forced their way into the multi-story residence and began arbitrarily removing and assaulting individuals from said residence and spraying mace into the crowded hallway entrance of the dwelling. MR. OCANA personally observed various officers beat several attendees in an unprovoked melee. He was also indirectly maced in the face. Apparently

someone had hit one of the officers outside with a bottle and the police in retaliation began beating partygoers.

12. At some point during the rioting by police MRS. OCANA began frantically looking for her son William, Jr. She ran to the entrance of the building and the police would not let her out of the doorway. She pleaded with the officers to see if her son was outside and the officer told her to "shut the fuck up". MR. OCANA oversaw this and went to inform his wife that although their son had been maced, he was okay, and was upstairs in the house. Mr. Ocana then walked to the front door of the subject residence and attempted to hand his driver license to police officers outside the door. He tried to calm the situation and remarked to the police that "you know, you guys got out of hand, you guys didn't have to do this" and that "we could talk about this".¹

13. The officers at the door responding by grabbing Mr. Ocana by his arms, pulling him to the ground, and beating him bloody while his wife watched in horror. She screamed at the attackers pleading for them to stop and as a result was also assaulted and thrown to the ground. In fact, her arm was twisted so badly by the police she was diagnosed with and underwent extensive treatment for brachial plexus injury.

14. Mrs. Ocana was handcuffed and brought to the 75th precinct. When the police learned that Mrs. Ocana's sister was a New York City Police Officer they released her with a summons for disorderly conduct. The summons was dismissed shortly thereafter by the criminal court. Mr. Ocana was arrested for Obstructing Governmental Administration and Resisting Arrest. All charges were dismissed by the criminal court on November 21, 2011 on the interest of justice application of the district attorney.

¹ Mr. Ocana is an analyst for Conde Naste, a 12 year veteran of the U.S. Army, homeowner, and has three children with Mrs. Ocana, a registered nurse. The Ocanas have no prior contacts with law enforcement.

AS AND FOR A FIRST CAUSE OF ACTION
(Deprivation of federal civil rights under the United
States Constitution and 42 U.S.C §§ 1981 and 1983)

15. Plaintiff AMY OCANA repeats and reiterates the allegations set forth in the foregoing paragraphs with the same force and effect as though fully stated herein.

16. By their conduct and actions in arresting, imprisoning, and failing to intercede on behalf of AMY OCANA and in failing to protect her from the unjustified and unconstitutional treatment he received at the hands of other defendants, defendants ROSENBERG, JACKSON, and DOES, acting with animus, and under color of law and without lawful justification, intentionally, maliciously, and with deliberate indifference to or a reckless disregard for the natural and probable consequences of their acts, caused injury and damage in violation of the plaintiff's constitutional rights as guaranteed under 42 U.S.C. §§ 1981 and 1983 and the United States Constitution, including its Fourth and Fourteenth Amendments.

17. As a result of the foregoing, plaintiff was deprived of her liberty, suffered specific great humiliation, costs and expenses, and was otherwise damaged and injured.

AS AND FOR A SECOND OF ACTION
(Deprivation of federal civil rights under the United
States Constitution and 42 U.S.C §§ 1981 and 1983)

18. Plaintiff WILLIAM OCANA repeats and reiterates the allegations set forth in the foregoing paragraphs with the same force and effect as though fully stated herein.

19. By their conduct and actions in arresting, imprisoning, and failing to intercede on behalf of WILLIAM OCANA, and in failing to protect him from the unjustified and unconstitutional treatment he received at the hands of other defendants,

defendants ROSENBERG, JACKSON, and DOES, acting with animus, and under color of law and without lawful justification, intentionally, maliciously, and with deliberate indifference to or a reckless disregard for the natural and probable consequences of their actions, caused injury and damage in violation of the plaintiff's constitutional rights as guaranteed under 42 U.S.C. §§ 1981 and 1983 and the United States Constitution, including its Fourth and Fourteenth Amendments.

20. As a result of the foregoing, plaintiff was deprived of his liberty, suffered specific bodily injury, pain and suffering, great humiliation, costs and expenses, and was otherwise damaged and injured.

AS AND FOR A THIRD CAUSE OF ACTION
(Liability of Defendant the City of
New York for Constitutional Violations)

21. Plaintiffs repeat and reiterate the allegations set forth in the foregoing paragraphs with the same force and effect as though fully stated herein.

22. At all times material to this complaint, defendant THE CITY OF NEW YORK, acting through its police department, and through defendants ROSENBERG, JACKSON, and DOES had de facto policies, practices, customs and usages which were a direct and proximate cause of the unconstitutional conduct alleged herein.

23. At all times material to this complaint, defendant THE CITY OF NEW YORK, acting through its police department, and through defendants ROSENBERG, JACKSON, and DOES had de facto policies, practices, customs and usages of failing to properly train, screen, supervise or discipline employees and police officers, and of failing to inform the individual defendants supervisors of the need to train, screen,

supervise or discipline said defendants. The policies, practices, customs, and usages were a direct and proximate cause of the unconstitutional conduct alleged herein.

AS AND FOR A FOURTH CAUSE OF ACTION
(Assault and battery)

24. Plaintiff AMY OCANA repeats and reiterates the allegations set forth in the foregoing paragraphs with the same force and effect as though fully stated herein.

25. As a result of the foregoing, plaintiff was assaulted and battered, suffered physical injury, great humiliation, costs and expenses, and was otherwise damaged and injured.

AS AND FOR A FIFTH CAUSE OF ACTION
(Assault and battery)

26. Plaintiff WILLIAM OCANA repeats and reiterates the allegations set forth in the foregoing paragraphs with the same force and effect as though fully stated herein.

27. As a result of the foregoing, plaintiff was assaulted and battered, suffered physical injury, great humiliation, costs and expenses, and was otherwise damaged and injured.

AS AND FOR A SIXTH CAUSE OF ACTION
(False arrest)

28. Plaintiff AMY OCANA repeats and reiterates the allegations set forth in the foregoing paragraphs with the same force and effect as though fully stated herein.

29. As a result of the foregoing, plaintiff was falsely arrested, suffered physical injury, great humiliation, costs and expenses, and was otherwise damaged and injured.

AS FOR A SEVENTH CAUSE OF ACTION

(False arrest)

30. Plaintiff WILLIAM OCANA repeats and reiterates the allegations set forth in the foregoing paragraphs with the same force and effect as though fully stated herein.

31. As a result of the foregoing, plaintiff was falsely arrested, suffered physical injury, great humiliation, costs and expenses, and was otherwise damaged and injured.

AS A FOR AN EIGHTH CAUSE OF ACTION

(Malicious prosecution)

32. Plaintiff AMY OCANA repeats and reiterates the allegations set forth in the foregoing paragraphs with the same force and effect as though fully stated herein.

33. As a result of the foregoing, plaintiff was maliciously prosecuted, suffered physical injury, great humiliation, costs and expenses, and was otherwise damaged and injured.

AS A FOR AN NINTH CAUSE OF ACTION

(Malicious prosecution)

34. Plaintiff WILLIAM OCANA repeats and reiterates the allegations set forth in the foregoing paragraphs with the same force and effect as though fully stated herein.

35. As a result of the foregoing, plaintiff was maliciously prosecuted, suffered physical injury, great humiliation, costs and expenses, and was otherwise damaged and injured.

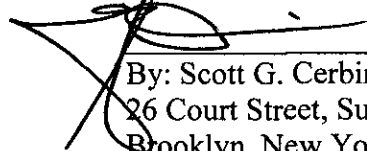
WHEREFORE, plaintiffs demand the following relief jointly and severally against both defendants ROSENBERG, JACKSON, and DOES and defendant THE CITY OF NEW YORK:

- a. Compensatory damages;
- b. Punitive damages;
- c. The convening and empanelling of a jury to consider the merits of the claims herein;
- d. Costs and interest and attorneys' fees;
- e. Such other further relief as this court may deem appropriate and equitable.

Dated: Brooklyn, New York
December 19, 2011

Respectfully submitted,

SCOTT G. CERBIN, PLLC
Counsel for the Plaintiff



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